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Roger Fulghum Baker Botts, L.L.P. One Shell Plaza 910 Louisiana Houston, TX 77002			EXAMINER BUTLER, MICHAEL E	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/635,962	HEIB	
	Examiner	Art Unit	
	Michael Butler	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 March 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-5,9-12,14-16 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-5,9-12,14-16 and 20-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Priority

1. Applicant's claim of priority to application 60/401959 filed 08/08/2002 is acknowledged.

Drawings

2. The drawings are acceptable.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 12, 14-18, 20- 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kovens et al. (US 6179161)which discloses all the claimed elements including:

(Re: cl 12) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly, employing a retractable gauge step for supporting products stored in the product dispensing assembly (c7 L 1-65), wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (col 7 L 29-50)
the retractable gauge step is substantially permanently affixed to the product dispensing assembly (col 7 L 1-65)

wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such

that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c6 L 1-65; 76 fig 6; FIG 6/12)

(Re: cl 14) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 15) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 16) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 8 L 1-21 ; FIG 6/12)

(Re: cl 17) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (col 8 L 1-21; fig 6/12)

(Re: cl 18) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (col 8 L 1-21; fig 6/12)

(Re: cl 20) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12)

(Re: cl 21) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12)

(Re: cl 22) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12).

5. Claim(s) 12, 14-18, 20-22 is/are rejected under 35 U.S.C. 102(b) as being anticipated by

Hieb et al. (US 4986615) which discloses all the claimed elements including:

(Re: cl 12, 1) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly; employing a retractable gauge step for supporting products stored in the product dispensing assembly; wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (c6 L 1-31);

wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other

the retractable gauge step is substantially permanently affixed to the product dispensing assembly (231/203/fig 5-6; 182 fig 4-6)

wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such

that the gauge step and the dispensing assembly are substantially permanently affixed to each other (fig 3-6)

(Re: cl 14, 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (fig 4-6)

(Re: cl 15, 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6)

(Re: cl 16, 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 17, 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 18, 7) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 20, 9) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 21, 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 22, 11) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28).

6. Claims 1, 3-5 and 9-12, 14-16 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Wittern, Jr. et al. '293 (US 6302293 A) which discloses all the claimed elements including:

(Re: cl 1) A vending machine, comprising:

a housing for storing products to be dispensed; a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing and rotatable about an axis, wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes; a product chute for receiving products when dispensed by the dispenser;

wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (C5 L 7-57)
and a motor coupled to the dispenser for rotating the dispenser (c4 L 41-67;c5 L 50-61)

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the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c5 L 1-51)

(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c5 L 1-51)

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c6 L 41-51)

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c10 L 19-57)
the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly(c12 L 24-42)

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c12 L 24-42)

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c12 L 24-42)

(Re: cl 12) A method for dispensing products from a vending machine, comprising the steps of: storing products in a product dispensing assembly; employing a retractable gauge step for supporting products stored in the product dispensing assembly; wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (c4 L 41-67;c5 L 50-61)

the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c5 L 1-51)

(Re: cl 14) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c5 L 1-51)

(Re: cl 15) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c6 L 41-51)

(Re: cl 16) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c10 L 19-57)

(Re: cl 20) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c12 L 24-42)

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(Re: cl 21) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly. (c12 L 24-42)

(Re: cl 22) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c12 L 24-42).

7. Claims 1, 3-7, 9-12, 14-18, 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Oden et al (US5529207) which discloses all the claimed elements including:

(Re: cl 1) A vending machine, comprising:

a housing for storing products to be dispensed 6;

a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing and rotatable about an axis ,

wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes (c3 L 52-c4 L 30);

a product chute for receiving products when dispensed by the dispenser ;

wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (16 fig 1 30/32 fig 8) and a motor coupled to the dispenser for rotating the dispenser (c3 L 52-c4 L 30);

(Re: cl 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c3 L 52-c4 L 30);

(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 7) the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 8) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently

affixed to each other (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 12) A method for dispensing products from a vending machine, comprising the steps of. storing products in a product dispensing assembly; employing a retractable gauge step for supporting products stored in the product dispensing assembly ; wherein the retractable gauge step is adaptable to dispense products of various sizes; and dispensing products from the dispensing assembly in a sequential manner (c3 L 52-c4 L 30);

(Re: cl 13) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (c3 L 52-c4 L 30);

(Re: cl 14) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 15) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 16) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 17) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 18) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 19) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 20) wherein the retractable gauge step is further Adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6);

(Re: cl 21) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the

products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6); (Re: cl 22) wherein the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (c3 L 52-c4 L 30; fig 4-6).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim(s) 1, 2-7, 9-12, 14-18, 20-22 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Hieb et al. (US 4986615) in view of Wittern, Jr. et al. '293 (US 6302293 A) wherein the former discloses the elements previously discussed and further discloses:

(Re: cl 1) A vending machine, comprising:
a housing for storing products to be dispensed ;
a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing,
wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes; a product chute for receiving products when dispensed by the dispenser (c6 L 1-31);

wherein the product dispensing assembly has a plurality of cutouts and the retractable gauge step has a plurality of wherein the cutout and the abutting flanges are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other
and a motor coupled to the dispenser for rotating the dispenser (231/203/fig 5-6; 182 fig 4-6)

(Re: cl 2) the retractable gauge step is substantially permanently affixed to the product dispensing assembly (fig 4-6)

col(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (fig 4-6)

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6)

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 7) the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (fig 4-6; c7 L 50-c8 L 28)

(Re: cl 8) wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (fig 3-6)

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly(holes & slots fig 3-4 ; c7 L 50-c8 L 28)

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (holes & slots fig 3-4 ; c7 L 50-c8 L 28).

Wittern, Jr. et al. discloses any elements not explicitly nor inherently taught by Hieb et al. including:

Rotatable dispenser rotatable about an axis, and a motor coupled to the dispenser for rotating the dispenser (c4 L 41-67;c5 L 50-61).

It would have been obvious at the time of the invention for Hieb et al. to use a motor to advance the product to dispensing as taught by Wittern, Jr. et al..

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10. Claims 1, 3-7, 9-12, 14-18, 20-22 is/are rejected under 35 U.S.C. 103(a) as being

unpatentable over Kovens et al. (US 6179161) which discloses all the claimed elements

including the elements previously discussed as well as:

(Re: cl 1) A vending machine, comprising:

a housing for storing products to be dispensed (10/12/19);

a product dispensing assembly comprising a dispenser for holding and dispensing products, wherein the dispenser has an open side and is mounted substantially horizontally within the housing and rotatable about an axis (c7 L 1-65),

wherein the dispenser uses a retractable gauge step adaptable to vend products of various sizes, a product chute for receiving products when dispensed by the dispenser; and a motor coupled to the dispenser for rotating the dispenser (col 7 L 29-50)

wherein the product dispensing assembly has a plurality of cutouts and the retractable gauge step has a plurality of wherein the cutout and the abutting flanges are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c6 L 1-31)

wherein the product dispensing assembly has a plurality of cutout slots and the retractable gauge step has a plurality of hooks, wherein the cutout slots and the hooks are coupled such that the gauge step and the dispensing assembly are substantially permanently affixed to each other (c6 L 1-65; 76 fig 6; FIG 6/12)

the retractable gauge step is substantially permanently affixed to the product dispensing assembly (col 7 L 1-65)

(Re: cl 3) the retractable gauge step adaptable to being in a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 4) wherein the retractable gauge step is adaptable to being in a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 5) wherein the retractable gauge step is operable to slide from a first position where the gauge step is extended to create a gauge step to support the product resting in the product dispensing assembly to a second position where the gauge step is retracted such that the gauge step does not support the product resting in the product dispensing assembly (col 8 L 1-21)

(Re: cl 6) wherein the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the first position (col 8 L 1-21)

(Re: cl 7) the retractable gauge step comprises a plurality of detents operable to hold the gauge step in the second position (col 8 L 1-21)

(Re: cl 9) the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the products resting in the product dispensing assembly (col 7 L 1-65)

(Re: cl 10) wherein the retractable gauge step is further adaptable to being in a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (Col 7 L 1-65; FIG 6/12)

(Re: cl 11) the retractable gauge step is operable to slide from a plurality of positions where the gauge step is extended to create a plurality of gauge steps to support the product resting in the product dispensing assembly to a plurality of positions where the gauge step is retracted such that the gauge step does not support the products resting in the product dispensing assembly (col 6 L 1-65; FIG 6/12).

The cutouts are suggestive of slots and the abutting flanges are suggestive of hooks. It would have been obvious at the time of the invention for one ordinary skill in the art to make the cutout notches into slots to provide retention of the retaining elements in plural directions and it would have been obvious to increase the angle of curvature of the flanges and make them into hooks to provide a more secure retention and come up with the instant invention.

Response to Amendment/Argument

11. The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections evidenced by Oden. Oden features a series of cutout slots 16 which the hooks located on the retractable gauge step are inserted into.

Applicant's amendment was effective in removing Kovens et al. as an anticipatory reference to claims 1-2, 4-7 and 9-11. However, bent flanges 76 sufficiently proximate hooks so as to represent an obvious variation on a hook. The notches the flanges mate with sufficiently proximate slots as to suggest the slot element to one of ordinary skill in the art. In the method steps, the applicant points out an apparatus structural limitation unutilized by any method limitation in claims in attempting to distinguish the claimed invention from the prior art. A structural limitation within a method claim needs a functional relationship to the method limitations to be afforded patentable weight. "The dichotomy between process and product

classes of invention has also been recognized and noted". Ex parte Lyell, 17 USPQ2d 1548,1552 (BdPatApp&Int, 1990) in the following discussion "A method or process... is an act or a series of acts and from the standpoint of patentability must distinguish over the prior art in terms of steps, whereas a claim drawn to apparatus must distinguish in terms of structure. The Patent Act of 1952 did not abolish the then existing different classes of invention. It reaffirmed the same by Section 101 of USC 35". Ex parte Lyell at 1552 citing Ex Parte Forsyth, 151 USPQ 55, 56 (Bd. of Appeals 1965); see also MPEP 2114 for the analogous rule on the unavailability of functional limitation solely as the distinction in apparatus claims from prior art.

Heib has hooks 231, 203 on the adjustably retractable stepped gauge ribs dispense gauging, the hooks on the ribs slide into the slots. The hooks slide into the cutout slots as the gauging ribs are retracted to the appropriately selected size.

Witern, Jr. et al. has hooks that mate into slots in the back wall that hook in retainer 28 (the stepped gauge) to adjust the stepped gauge for the size of the dispense.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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